



**STATE OF HAWAII  
2011 REAPPORTIONMENT COMMISSION**

**2011 NOTICE OF REAPPORTIONMENT COMMISSION MEETING**

Date: Tuesday, July 12, 2011  
Time: 2:00 PM  
Place: State Capitol, Conference Room 325  
415 South Beretania Street  
Honolulu, Hawaii 96813

**AGENDA**

- I. Call to Order – Chair
- II. Roll Call and Determination of a Quorum
- III. Approval of Minutes for meeting of June 28, 2011
- IV. Public Testimony – Any interested person may submit data, views or arguments on any agenda item
- V. Input from Advisory Councils - Discussion and action, if appropriate, regarding those matters
- VI. Discussion and action, if appropriate, regarding Constitutional and statutory criteria and technical specifications for public submission of proposed redistricting plans
- VII. Discussion and action, if appropriate, on status of work for Technical Committee
- VIII. Update on matters from Reapportionment staff. Commission discussion and action, if appropriate, regarding those matters
- IX. Executive Session

Pursuant to HRS § 92-5(a)(4) to consult with the Commission's attorney concerning legal issues regarding population base, permanent residents and prior case law regarding reapportionment and redistricting; and

Discussion with counsel and action, if appropriate, regarding possible advisory council litigation concerning the Reapportionment Commission's decision to include military personnel and their dependents in the population base.

Pursuant to HRS §92-5(a)(2) relating to filling staff positions as consideration of matters involving privacy will be involved.

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X. Future meeting dates

XI. Adjournment

THE COMMISSION MAY ELECT TO CONSULT WITH COUNSEL IN EXECUTIVE SESSION PURSUANT TO SECTION 92-5, HAW. REV. STAT. IF YOU REQUIRE SPECIAL ASSISTANCE OR AUXILARY AIDS AND/OR SERVICES TO PARTICIPATE IN THE PUBLIC HEARING PROCESS OF THE COMMISSION, PLEASE CONTACT THE OFFICE OF ELECTIONS AT LEAST 48 HOURS PRIOR TO THE HEARING SO ARRANGEMENTS CAN BE MADE. FOR FURTHER INFORMATION, PLEASE CALL THE OFFICE OF ELECTIONS AT 453-8683 OR 1-800-442-8683 FROM THE NEIGHBOR ISLANDS.

**STATE OF HAWAII  
2011 REAPPORTIONMENT COMMISSION**

**MINUTES OF THE REGULAR MEETING OF THE  
2011 REAPPORTIONMENT COMMISSION**

June 28, 2011  
2:00 pm

State Capitol, Room 325  
Honolulu, Hawaii 96813

**Commissioners Present:**

Victoria Marks, Chairperson  
Calvert Chipchase, IV  
Clarice Y. Hashimoto  
Harold S. Masumoto  
Elizabeth N. Moore  
Dylan Nonaka  
Lorrie Lee Stone  
Anthony Takitani  
Terry E. Thomason

**Technical Staff Present:**

Robyn Chun, Department of the Attorney General  
Judy Gold, Office of Elections  
Caryn Moran, Office of Elections  
Scott Nago, Office of Elections  
Kristen Oka, Office of Elections  
Rex Quidilla, Office of Elections  
Carolyn Roldan, Office of Elections  
David Rosenbrock, Office of Elections  
Rhowell Ruiz, Office of Elections  
Aaron Schulaner, Office of Elections  
Lori Tomczyk, Office of Elections  
Charles Wong, Office of Elections

**Observers Present:**

Jean Aoki  
Bart Dame  
Nancy Davlantes, Common Cause Hawaii  
Josh Frost, Progressive Democrats of Hawaii

JoAnne Georgi, Kauai Advisory Council  
Kristeen Hanselman, UHPA  
Glenn Ida, Oahu Advisory Council  
Krishna Jayaram, City & County of Honolulu  
Barry Lamb, Hawaii Advisory Council  
Michael Levine, Civil Beat  
Nikki Love, Common Cause  
Lynne Matusow, Downtown Neighborhood Board  
Amy Monk  
Pat Nakamoto, County of Hawaii-Elections Division  
Mark Niesse, AP  
Will Nhiev, Office of Senator Donna Mercado Kim  
Randall Nishimura, Kauai Advisory Council  
Michael Palcic, Oahu Advisory Council  
Sam Puleasi, Democratic Party  
B.J. Reyes, Star-Advertiser  
Fred Rohlfing, Maui Advisory Council  
Madge Schaefer, Maui Advisory Council  
Senator Sam Slom, State Senate  
Tom Smyth, Military Officers Association of America  
Glen Takahashi, City & County of Honolulu-Elections Division  
Melissa Vomvoris, Office of Senator Les Ihara  
Shannon Wood, Windward Ahupuaa Alliance

**I. Call to Order**

Chairperson Marks called the meeting of the 2011 Reapportionment Commission to order at 2:02 pm.

**PROCEEDINGS**

**II. Roll Call and Determination of Quorum**

Roll call was taken and all Commission members were present.

**III. Approval of Minutes**

Chairperson Marks moved to approve the minutes of the June 9, 2011 meeting and reconvened meeting on June 15, 2011. Commissioner Masumoto noted that

the minutes of the June 9, 2011 meeting, page 6, paragraph 1, should clarify that the order of subjects be "reversed" instead of "removed".

Commissioner Moore noted that she was not present at the reconvened meeting on June 15, 2011 and would abstain from voting on approval of the minutes.

Chairperson Marks amended her motion to approve the minutes of the June 9, 2011 meeting, recessed and reconvened on June 15, 2011, as amended. The motion was seconded by Commissioner Masumoto and the minutes were approved as amended with no objections from the eight commissioners present and Commissioner Moore abstaining.

**IV. Public Testimony – Any interested person may submit data, views or arguments on any agenda item**

Mr. Palcic testified on his own behalf that the method and standards used by the U.S. Census to count people should be followed in Hawaii redistricting and that the census is very inclusive in counting the population used in federal redistricting. He summarized information provided on the U.S. Census website. He stated that the U.S. Census counts individuals at their location on census day at each person's usual residence, where the person lives and sleeps most of the time. He stated that the census term "usual residence" is not necessarily the same as a legal or voting residence address and that the term included, for example, those in military barracks, a shelter, jail, mental facility, prison/jails or college dorm away from home. He noted that the census count included babies born by 11:59 pm on the census day and persons alive for any portion of that day.

Chairperson Marks asked Mr. Palcic if he had comments on the issue raised in earlier testimony that Kansas and Hawaii are the only two states that do not currently include military and dependents in their counts for reapportionment. She noted this issue has been raised at Commission meetings and in the news media but she did not have a specific source. Mr. Palcic stated that he had a document from the State of Kansas entitled "Kansas Population and Adjustment for Legislating Redistricting" from a redistricting seminar publication by the National Conference for State Legislatures (NCSL), reporting that Kansas conducts an independent survey of military members and dependents to identify those to be extracted from the census population. He said Kansas does not make a wholesale extraction of military members and dependents based on a model as Hawaii has done previously, and that not very many people are

extracted based on the methodology used by Kansas. He noted that Kansas reportedly looked for people outside the state who should be included and counted them as well. He provided a copy of the NCSL study to Chairperson Marks.

Commissioner Thomason asked whether Project Manager Rosenbrock could confirm that Kansas and Hawaii were the only two states that currently extract military members from their counts. Project Manager Rosenbrock noted that he provided Mr. Palcic the NCSL document and confirmed no other states do this type of extraction. Mr. Palcic noted that Texas previously extracted these persons, but no longer did so. Project Manager Rosenbrock noted that Texas and Alaska previously extracted military counts but that these two states no longer did so.

Mr. Smyth, representing the Military Officers Association of America, testified on additional information from Kansas, noting that its State Constitution, Article X, Section 1 entitled "Reapportionment of Senatorial and Representative Districts," Subsection a-1 on Exclusions, addresses military and non-resident students, and does not mention military family members. He added the Exclusions subsection also did not mention convicts.

Mr. Smyth also noted that the Kansas reapportionment process is done by a commission composed of members of the legislature and would be starting the process soon. He said that the Kansas state house and state senate each appoint members to the commission to set boundaries for their respective member districts. He noted that both chambers of the Kansas Legislature have approximately twice the number of seats than their counterparts in Hawaii, that the state is largely Republican, and that their process is more complicated because smaller changes in population can affect redistricting. He added that a House Concurrent Resolution was considered by the Kansas Legislature in 2009 to delete students and military, but that it was not adopted.

Kauai Advisory Council Chairperson Nishimura inquired whether staff needs to train Advisory Council members for software to be used for developing draft plans, or if a tutorial can be used. He noted that using the tutorial would be a lower cost than staff travel for training. Project Manager Rosenbrock stated there is a tutorial that will be accessible shortly on the Reapportionment website. Chairperson Marks stated there was no expectation to send staff to train any Advisory Council, however will try to accommodate any requests for assistance. She added that anyone is free to work on a draft plan for submission when the

mapping software goes online and that it will be available to the public. Project Manager Rosenbrock noted that he would be providing hands-on training on July 1, 2011 on the Big Island, and that it is available upon request.

Mr. Dame testified on his own behalf that he had spent a lot of time reviewing Olelo broadcasts of the previous Commission meeting, reading all reports of the 2001 Reapportionment Commission, reading news articles, and reviewing archival materials on previous reapportionment plans and the 1992 amendment to the Hawaii State Constitution pertaining to extraction of military and dependents. Mr. Dame stated that reports and minutes of the 2001 Reapportionment Commission showed that the Commission initially voted 5-4 to include non-resident military members and dependents in the count, but reversed that decision after further testimony and discussion at a later meeting, when past Chairperson Wayne Minami changed his position. Mr. Dame quoted from past Chairperson Minami's statement at the time he changed his mind and voted to exclude military from the redistricting count.

Mr. Dame stated that he believes it is clear that interpretation of "permanent residents", the term used in the State Constitution, is unambiguous and that there has been discussion of what constitutes a "resident", but there has not been discussion of what constitutes a "permanent" resident. He said he felt the legislative intent for the proposed amendment was clear, citing the House Judiciary Committee report from its hearing on February 6, 1992, that cited the report of the 1991 Reapportionment Commission, Chapter III, as to how to define permanent residents. He further stated that he found minutes by Mr. Dwayne Yoshina, Secretary to the 2001 Reapportionment Commission, were extremely helpful in understanding the positions presented.

Mr. Dame also cited testimony before the House Judiciary Committee at the February 6, 1992 meeting by Richard Clifton, a member of the 1991 and 2001 Reapportionment Commissions, on determining a permanent resident. He stated that the Judiciary Committee wanted to be clear and unambiguous about extractions. He stated that he understands the position that military members deserve representation but that it collides with the 1992 language in the Hawaii Constitution.

Mr. Dame also testified that he understands there is a pragmatic concern about including the military, since there has not been a discussion of how accurate a method would be to extract their numbers from the count and a discussion of what standard would be acceptable. He said that he believes extractions may not

be precise but that courts do recognize language for a standard that is less than perfect, such as "as near as practicable."

Mr. Dame stated that the system would do harm to some, one way or another. He stated that we know in advance that Oahu will retain a Senate seat if the military is included, and that by right, that seat should go to the Big Island. He stated that he has a proposal to extract more accurately if there is agreement that families can be extracted. He stated that we know with precision that approximately 99 percent of military members and dependents reside on Oahu, and that including these counts would inflate the political weight of persons in districts with a high military population, and would dilute the political power in areas that do not have a large military population. He said the Commission risks doing harm to the Big Island if it does not get its fair share of seats because military and dependents are counted for redistricting. He said the question of sloppy numbers comes into play in redistricting rather than in reapportionment. He said that extraction can be done by subtracting the percentage of military from the census population on Oahu and then compared to the number statewide as an appropriate method, and that it would be limited to Oahu.

Mr. Dame stated a fundamental problem was that the Reapportionment Commission includes only one person from an island other than Oahu. He noted that all Advisory Councils from the neighbor islands have expressed their position against including military and dependents and that the Oahu Advisory Council's position was to include military and dependents.

Commissioner Masumoto stated he respectfully disagrees with Mr. Dame, but he agrees there should be fair representation, consistent with the principal of "one man, one vote" and that the majority of the population is on Oahu. He stated that a decision on whether or not to include non-resident military and dependents would not be based strictly by the position of the Advisory Councils. Mr. Dame stated that if one-third of the State population is on the neighbor islands, there should be three neighbor island members on the Commission. He added there is not a random correlation between which Advisory Councils have taken a position for or against including military and dependents in the population base.

Commissioner Chipchase asked Mr. Dame if he believed non-resident students should be excluded from the definition of permanent resident. Mr. Dame said "yes", since there was not a good method of extracting them from population count. Commissioner Chipchase asked if it is correct that there is information on



the number of non-resident students at the University of Hawaii-Manoa but not specific addresses where students lived.

Project Manager Rosenbrock stated that was the level of information available. Commissioner Chipchase noted that it would be possible, using a model, to extract certain number of non-resident students from areas around the University of Hawaii, but that adjustment was an imperfect way to count. He questioned at what point an imperfect method would be the right way to count. Mr. Dame responded that the term "imperfect" suggests the wrong standard that the State needs to look for perfection. He stated that there is a method to weigh competing rights of citizens of the area represented.

Mr. Dame referred to his testimony at past meetings, giving the example of a district that included the military base at Mokapu Peninsula. He stated that he found a draft map from the 2001 Reapportionment Commission that consisted of Mokapu Peninsula, a portion of Kaneohe Bay Drive, and the coastal plain of Kailua. He stated that although the map was not approved, it showed an example of a proposed district in which approximately 1,180-plus [sic] persons were military; the target house district populations was around 22,000 persons. He stated that over half of the district population would not have been permanent residents as defined by the Hawaii Constitution and such a plan would have violated the principle of "one person, one vote", and would have given twice the weight to votes of the district's permanent residents over other districts far from a military base.

Mr. Dame stated there has not been enough discussion about how sloppy or how precise a method would be and that when he read past reports, it looked like the methodology was pretty good. He said the methodology could assign military dependents to the right communities although it would be a little tougher to identify the right census blocks. However, he said he believed it would average out when census blocks were aggregates and that it would be fairly accurate even if not perfect. He stated it would be better to make the best good faith effort, as far as practicable, to honor the language in the State Constitution. He added that otherwise, the Commission would risk doing harm of diluting votes by their inaction.

Commissioner Chipchase asked at what point a person becomes a permanent resident, not as a legal matter but as defined with some indicia of permanency. Mr. Dame stated he did not think there was a clear line that determines it, but said a factor to mitigate counting people is a legal declaration provided by the

Department of Defense that over 90 percent of military personnel have residency in another state. He said this would mitigate against the assumption that such persons were temporary or permanent residents of the state. He said he believed that the vast majority of dependents follow the residency of the spouse and that when the military member leaves, the dependents follow. He stated it would be worthwhile to investigate and that he is open to considering any evidence to counter the assumption he described.

Commissioner Chipchase stated these were assumptions but were no indicia of permanence or when a resident crosses the line to be deemed permanent. Mr. Dame stated it was possible to go back to what the language was intended to mean a definition for permanent residents. Commissioner Chipchase noted that he was guided and bound by the Hawaii Constitution, and that its amendment to include permanent residents instead of only registered voters demonstrated the intent to broaden the population base. Mr. Dame stated that he is not an attorney, but he has looked at the plain language and totality of the language. He said that if those were not satisfactory, then legislative intent should be looked at. He stated it would be nice if someone would stipulate that the legislative intent to exclude military and dependents was unambiguous and very clear in the Judiciary Committee Report in 1992.

Commissioner Thomason referred to Mr. Dame's testimony at the last meeting in favor of counting non-military civilian employees who were in Hawaii temporarily for employment, but not counting military and dependents. Mr. Dame stated that he recalled the exchange, but clarified that Commissioner Thomason had asked if he believed non-military temporary employees should be counted but that military dependents should not be counted. Mr. Dame stated his answer was that temporary workers should be extracted from the count if there was evidence that they had another residence, and that this evidence did exist for military persons who made a declaration of residence in another state. Mr. Dame said that, using such declarations by the military for extraction, the population count would average out and those military personnel tend to concentrate in certain areas. He added that civilian workers may also cluster in certain areas but would be fewer in number and would not distort overall population counts. He stated extraction of military was not discrimination of a group based on employment by the federal government but that military personnel make a declaration of residency, which is an indication of residency.

Commissioner Thomason stated that it would be difficult to follow the scheme for extraction described by Mr. Dame and that the principle of "one man, one vote"

was of great importance but not the only thing that applies. Commissioner Thomason stated that the demographics will create additional problems, particularly since extraction only from Oahu would create more difficulty.

Commissioner Thomason stated that some ethnic groups and protected classes are not found in high numbers outside urban areas. He said the representation of these populations could be distorted if inaccurate models are used to extract groups of people, noting as an example that Hawaii may be one of the few places where Caucasians are not in the majority and that ethnic groups represented in the military may not be the same as the general population. He said that models have limitations for establishing a population base, giving the example of military dependents who have been here all their lives and should be counted accurately. He noted there is anecdotal reporting, but these incidents may not be based on precise assumptions and are not provable. He commended those participating for being able to disagree without discrediting views presented. Commissioner Thomason thanked Mr. Dame for his efforts and commended his well-organized and thoughtful presentations.

Mr. Dame said Commissioners have been gracious in considering the issue and should still recognize concerns that Hawaii is vulnerable to lawsuits regarding the state, not federal, redistricting population. He noted that courts previously allowed including military in population counts, and that current technology might create more accurate results. He stated he believes it is not ambiguous and that the Hawaii Constitution provides for extraction of non-resident military and their dependents.

## **V. Reports from Advisory Councils**

Hawaii Advisory Council Treasurer Lamb reported on the Council's meeting on June 9, 2011. He stated that after considering opinions presented, the Council voted to recommend against multi-member districts and canoe districts; against inclusion of non-resident military members, dependents of non-resident military, and sentenced felons, and in favor of including non-resident students. He stated that he believes extraction will end up in legal action with the State going one way and federal going the other way. Chairperson Marks asked if the Council had a specific rationale for recommending exclusion of non-resident military and dependents from the population base, while recommending inclusion of non-resident students. Hawaii Advisory Council Treasurer Lamb responded that there was an inconsistency and that the Hawaii Advisory Council might consider the issues further at their July 1, 2011 meeting.

Oahu Advisory Council Chairperson Palcic submitted minutes from the Council meeting held earlier in the day. He noted the Oahu Advisory Council recommended that the Commission begin planning immediately for at least four public hearings to be held as soon as possible after the release of the draft plan on August 7, 2011; that dates, times and facilities be set and announced as soon as possible, and that the public hearings are publicized as widely as possible. He said the Advisory Council recommended four public hearings should be the minimum held on Oahu, with ideally seven hearings recommended to reach as many people as possible. He stated the 20-day rule for hearing notices did not preclude setting hearing dates and locations well before actual publication of the proposed plan. He also commented that the Oahu Advisory Council is getting feedback from Neighborhood Boards and will continue to solicit comments for a later report, and that the Council has postponed discussion of specific plans until the Commission has done further work.

Chairperson Marks made a motion to amend the agenda to include discussion and action on permanent resident population, and that the issue is included on the next meeting agenda for further action if necessary. Chairperson Marks stated that the issue was not listed separately in today's meeting agenda due to her oversight and had been on the agenda at previous meetings, with coverage by news organizations. Commissioner Chipchase seconded the motion with no objections from the nine commissioners present.

Chairperson Marks made a motion to change the order on the agenda and move the Executive Session to the present time. Commissioner Nonaka seconded the motion with no objections from the nine Commissioners present.

Chairperson Marks stated that at the reconvened meeting on June 15, 2011, there was an issue involving a recording device left in the meeting room, and that issue had been resolved.

## **VI. Executive Session**

Chairperson Marks moved for the Commission to go into executive session to confer with counsel on population base and personnel issues. Commissioner Thomason seconded the motion with no objections from the nine commissioners present.

The Commission resolved to executive session at 2:55 pm.

Reconvene of Meeting

The Commission returned at 4:29 pm. Chairperson Marks moved to go into regular session. Commissioner Thomason seconded the motion with no objection from the nine commissioners present.

Chairperson Marks asked staff when information would be available from the military. Project Manager Rosenbrock responded he has been in touch with the appropriate offices and estimated the information would be available in about 10 days.

Commissioner Nonaka moved that the Commission use the U.S. Census population count as the resident population base for State redistricting. Commissioner Thomason seconded the motion.

Commissioner Nonaka stated, "OK, I'll start since I made the motion."

"Basically the idea behind this is that we use the total census count as in our State redistricting, which means we would count every one of the groups that are possibly excludable."

"And I think if this motion doesn't pass, we would have to go through one by one and discuss each of the different population groups and whether to exclude them or not to exclude them, but the idea here is that we match what the federal government requires us to do with the congressional seats and use every person that was here counted during the census, which is approximately 1.36 million people, and use that population base as the same basis that we draw the State legislative lines off of."

"And I have some reasons, I'll go through, I think there has been a lot of thoughtful debate and discussion about this and I appreciate that from the members of the public."

"And, I would like to start off by just addressing some of those, and responding to them from my point of view and most of these have been based upon or pointed towards the military and their dependents on whether or not we should count, or count them and so a couple of the arguments that I just, I feel I wanted to address from my point of view are:"

"They are legal residents of another state. I think the legal or technical status of a military member doesn't change the fact that they live here in the State and are affected by the policies made by our State legislature. They also use public services. And no other group that we are talking about is excluded, or talked about being excluded, based upon their legal or technical status and I don't think the members of the military or their dependents should be treated any differently."

"Another discussion point has been on whether or not they pay taxes. And, although that is true of income taxes, they definitely pay the excise tax, you know, gasoline taxes, alcohol taxes, vehicle weight taxes, cigarette taxes, taxes on moving containers here, taxes on visitor accommodations, park fees, and any other of the numerous, numerous taxes that our State imposes upon people that are in the state, so I just wouldn't personally use that as a basis to exclude someone on representation in our State legislature."

"On the issue of them not voting, is one that is compelling that has some technical aspects to it but I also feel that whether or not a person can or does vote shouldn't be a basis on whether or not they deserve representation in the State legislature. For an example, there are 600,000 residents in the State of Hawaii who do not regularly vote or participate in our elections. And that doesn't exclude them from being counted or represented in the legislature."

"And specifically speaking the districts, the one gentleman brought up the issue of having a large military population on one base and half of the residents being voters and half may not be voters and you would have, you know, less people comparatively voting in an election than other places and although there's truth to that, that's true whether or not you have a base there, depending on where you are in the state."

"And a good example of that is, House District 45 in Waianae, which doesn't have a large military population on it, it definitely doesn't have a base on it. According to the census, it has 25,150 people. There's only 10,070 registered voters in that district and in the last election the total turnout was 4,654. So out of the 25,150 residents, only 18 percent of those residents chose to participate in the last election. But according to the way we would redistrict, all of those 25,000 people would be counted, maybe there is a very few that would be excluded if they are military if we decide to exclude."

"But their participation in elections and voting shouldn't change their right to be represented and they're just examples of citizens and residents, legal residents that meet the other criteria that we're using to include folks and we would exclude them if they were members of the military and that to me shouldn't be a basis for exclusion whether or not you vote in the State or participate in elections."

"I understand they haven't been counted in the past and I just feel like that doesn't change just because they didn't do it in the past, that doesn't mean it shouldn't be done differently in the future. I think in a lot of ways it was probably a wrong decision and I think this may be chance for us to, to right a wrong."

"On the issue of neighbor island representation, which is one that's near and dear to my heart, I will state again for the record that I still consider myself a neighbor islander. I have spent 90 percent of my life in voting age on the neighbor islands and have spent probably 10 percent here on Oahu. So I plan to go back to the neighbor islands, and I plan to be buried there, so I'm not, I'm not going to, I feel like I had some, I do represent the neighbor islands, especially the Big Island, that's where I am from, that's where I was born and raised."

"And on the issue of them winning or gaining or losing seats, I really feel like we got to separate ourselves from making this decision based upon a political aspect of who gains or loses politically. It really should be a decision about whether or not we should count every member of our community who lives here who are affected by the laws that our state makes and whether or not they deserve representation in the legislature. And again, the military is no different than anyone else in terms of how they are affected by our State government and whether or not they should be represented and I think they should."

"Going on to some of the reasons why I think we should count them. I think legally, and there some other folks I think on this Commission who can probably more clearly speak to these issues, but I think the U.S. Constitution is clear that it requires us to count everybody for the federal reapportionment and I think that clearly, should apply to the State reapportionment also. If our State Constitution, if it's ruled someday that our State Constitution conflicts with that, it should be fixed because clearly the federal Constitution overrides the State Constitution and I think, up until this point, I haven't been given conclusive, or I haven't been convinced conclusively that the State Constitution prohibits us from counting the military or the dependents or out of state students or any of the other groups that we have the opportunity to exclude."

"As a matter of practicality, I think we should, we should count everyone, really looking at this from a representative standpoint."

"I've asked some of, some of the elected members of our legislature whether or not, when a member of the active duty military who's a non-resident or legal resident somewhere else, calls their office and wants to give them input on a bill, a resolution, a school, a road and whether or not they ask that person are you, do you count towards reapportionment or can you vote for me before they help them. I mean, they don't do that. They will help that person regardless of whether or not, what their legal status is, and what their resident status is, and whether or not they are registered to vote. You know, there never is, I am not aware of any staff or legislature who would screen a person prior to helping them address their concerns."

"And so, I think it is unfair to that representative and their staff who are tasked to help these people and the governor and every other elected official in our state or, you know, a member of a district, single member district who may have 35,000 residents in their district because they have 10,000 military who weren't counted in the last reapportionment because they have more people to represent than someone else who has 24,000 people in their district because the folks in their district, they didn't have any active duty military that were excluded in the last reapportionment. So, it's unfair not only to the representative who has an unequal number of people to represent and advocate for here at the state legislature but it's also unfair to the residents in the district, who are less, are less represented, they have less representation because segments of their neighbors were not counted based upon a decision the Commission made ten years ago."

"The matter that if we exclude them, or if we exclude any of these people, any of these population groups, military, students, felons or aliens, not being counted anywhere is important to me, I feel like everyone deserves representation on every level of government and if, and that's why in the, for the U.S. Census, and for the, I mean for the Congressional seats we have to count everyone. On the State, in the State reapportionment, if we exclude anybody, they are not counted in their home state or where they're a legal resident of, or whatever the multitude of criteria are that we could use to exclude them, doesn't mean they are included somewhere else so in effect they don't exist in terms of representation anywhere and I just think, on principle, that's wrong. Especially members of our military who are serving our country deserve to be counted someplace and they deserve to be represented at county, state and federal government and they should be



counted, if they were here at the census, they were counted here and they should be included in the population base."

"And finally I think there is going to be more discussion about this also, but there is also some technical reasons that I think we have to consider when we are excluding folks and what the legal implications are later on and I, definitely have issues with how scientific the process is with folks being removed, based on the different types of information and data that's available to us. There is no uniformed scientific clear way to exclude these groups, it would have to exclude them on different, using different criteria, using different computer models and the more we do that, the less accurate the census count gets, the less accurate the population count gets and the less accurate our districts will be when we draw them. And this is true of, of, not only the military who we get limited information on but definitely true of students who we get very little information on. How we exclude them, they are kind of arbitrarily removed based on a computer model, which, I think is definitely challengeable in court, on a lot of different faces and has been in other places and so I think for technical reasons we have to consider that definitely in this, in this decision making process and I just want, I think overall that we, there is clear guidance and there is clear precedence for using everyone. Most states do it, we had some discussion earlier about confirming that but it seems clear from most research and advice we've gotten that the vast majority of states do count, don't exclude folks, especially the military and we should, we should follow that. And I think it would just be the most accurate and fair way to create a plan that most, most accurately represents and gives representation to the members of our community and our State. So I definitely support using the census count as the resident population count for our State, our State redistricting and look forward to hearing everyone else's input."

Commissioner Moore stated, "Sure. He has kind of said most everything that I wanted to say, but I just wanted to kind of focus a little on, as I understand it, the definition of permanent residence is not that clear. And, information that we have that we received, and so that's one concern. And then my other thought was that the other states as we have heard, predominately, do count the military that are present at the day the census is taken. So, I'm concerned that if we don't, at some point, there could be legal action on that. So those are the two additional points that I would want to focus on besides a lot of the things Dylan already thought out."

Commissioner Chipchase stated, "Chair, thank you. We've considered this issue over a number of months, and there's been testimony from the public, and written submissions and comments from the commissioners and questions from commissioners and I think that we've given it consideration, due consideration that serious questions demand. On balance, I am persuaded by legal, factual, practical and principled points made in favor of including everyone on the census count that would be military non-resident dependents and non-resident students and felons in the count. And three considerations in particular led me to reach that conclusion."

"The first is that the Constitution gives no guidance as to who as a factual matter is a permanent resident, the indicia of permanence under the Constitution. The Constitutional change from registered voter to permanent resident teaches me only that the persons included for reapportionment were broadened. More people were included, or are included now than were included and the education ends there. Take no more factual guidance from that change. And so I find as a factual matter that the U.S. Census provides us with data on who should be considered for reapportionment purposes."

"And I have no evidence before me, no real evidence, of impermanence that any of the groups we are considering are impermanent: the non-resident students, the military, their dependents and felons. In other words, we are given a population database; a population set, and told these are the residents of your island. And we are asked whether we should exclude some of those groups from that data set, from that population, for impermanence. I have no evidence to support such exclusion."

"Further, even if I had evidence that the group or particular group were not permanent, were impermanent in our state, I find that as a factual matter I would have no reliable basis for excluding them from the count. For example, it might be said that some non-resident students travel home during breaks or maintain their parents' addresses or legal residence, don't work here or pay taxes here. But surely that can't be said of all non-resident students. And even if I could identify those non-resident students for whom that is true, I could not pluck them out of the census tracts for reapportionment purposes."

"The same is true for military and their dependents, who have a greater claim to permanence than a non-resident student. I cannot in good conscience use imperfect data to exclude from the census count. I cannot introduce conjecture in the process."

"Finally, I would find that even if I could exclude that even if I could have or did have evidence of impermanence sufficient to exclude them, and that I could identify them to exclude them from the census count, that I would have no rational basis for doing so. There would be no rational basis for treating non-resident students, military and their dependents or felons as non-residents or impermanent residents for purposes of the census count, for excluding them from the State count when they are included in the federal count."

"And for those reasons and all the reasons that have been expressed during these many, many meetings by the commissioners and by the public, and through the written submissions, I vote in favor, or I will vote in favor of including the entire census population tracts for state redistricting purposes."

Commissioner Thomason stated, "I share Commissioner Chipchase's views. I want to point out especially though that I appreciate and understand the concerns of rural communities that an artificial inflation of communities on Oahu will deprive them of the full weight of the vote they should have."

"For the reasons that Commissioner Chipchase raised, I believe that we cannot, using the models that we have, identify which of the districts on the island of Oahu that should be reduced so that we can assure the outer islands that they are not being deprived of the full weight of the vote that they deserve. Under the circumstances that we have, the imperfect data that we have, our obligation first is to ensure that each individual is represented equally by representatives that are available under our form of government. We cannot protect a small group solely upon, because of their concern, that their vote may be less because there are people that they don't share views with on a different island. Our community includes all of the segments including the felons, the military members, the military dependents and the students. All of us share services, all of us look to the police to protect us, all of us share these same needs from the community."

"And based upon the limited data that we have, and our inability to identify which communities where we would extract those who may not be permanent residents, I feel compelled to vote in favor of including all of the members so that the population base that we use for state districting will be the same as the population base that we use for reapportionment at the federal level. Thank you."

Commissioner Masumoto stated, "I think one of the reasons I'm going to vote to include, I think basically we're talking about military at this time, is, I just want to be consistent. This is the third time I'm voting on this issue, and the last two

times I voted to include them, and I'm glad my colleagues from, appointed by, the Minority Leader in the House and Senate have come around to the position that we've been espousing, we put forth the last, 10 years ago. So anyway, I kind of agree with Commissioners Chipchase and Thomason, the question of extraction of these military and students bothers me quite a bit. My understanding is that, and I'm fairly certain, that we cannot get home addresses of anyone anymore because of all the privacy acts and all those other things."

"So it differs from what it was even 10 years ago, because I think 10 years ago, the college kids, you probably could get some addresses and things, but now there's no way you can get addresses anymore. And you definitely or probably can't get it from the military, although the question has been asked of the military. I'm fairly certain the answer's going to be "we can't give you that data because of privacy concerns." They'll probably give you data on census, not on census but zip codes of where their addresses are in Hawaii."

"My understanding is that, for instance on Oahu, there must be about 40 or 45 zip codes. Maybe there's one in Wahiawa, and there's another one in Haleiwa probably, for instance. I think there's one, I looked it up actually, there's one in Mililani, one in Wahiawa and one in Haleiwa, for let's say Schofield Barracks. OK, but then you also look at the base that the Commission will be working from will be census blocks. My understanding is there are about 24,000 census blocks statewide, so I'm assuming that Oahu must have about 12,000 census blocks. And I just don't think that we can accurately extract those military and military dependents from the appropriate census blocks, which will affect how many people are counted in that particular district. So, I have a concern, I don't think we can do it, I don't think there's any rational basis. I think, I know we used a model last time and I think they used certain assumptions but I questioned the assumptions. I can't quote it for you now, but I questioned those assumptions the last time and I still question those assumptions now. So the accuracy of the extractions I think is very questionable."

"The second point is, I kind of, like Bart, I think he has a very eloquent argument for excluding them. I kind of look at the question, of whether we would have some federal equal protection problems. And I haven't read a Supreme Court case in 20 years, I don't think, anymore. But what I understand about all the Supreme Court cases that people are citing now are all based on, quote, the word population, rather than permanent population, et cetera. And you know, you can use criteria if you can, I think, find a rational basis, you can justify exclusion, excluding people."

"But I have a hard time believing that we can come up with a rational basis to exclude military. And I have a feeling you cannot come up with a rational basis to exclude a broad category of individuals, like people in the military who may, and the military I think is composed of a lot of minorities. I think if you can't find a rational basis for exclusion, I have a feeling that they're going to run afoul of the Equal Protection Clause, of the 14th Amendment. That bothers me as well."

"And I have also been, kind of been persuaded by the testimony that all, everyone has given us, especially the retired military officers and other active military personnel. The military really are a part of the community in Hawaii. Things have changed from 20 years ago, or 50 years ago when I was in the military. You know, you were there temporarily, there's no question, my wife was, you know, in those days in the military, they're stationed there for two years, they're draftees. They're there, they can't wait to go home to their home of record. But now the military are an entirely different kind of military. They're all volunteers and a lot of them, I think even if they're on active duty here and you exclude them, they have an intent to remain here. And of course, a lot of them want to work for the government contractors here, and I think that's the goal of a lot of people in the military, especially with technical skills."

"But they are part of the community and I don't think we can get around that fact. So, for those reasons, especially the difficulty in extracting them accurately, which I think deprives someone of equal protection, I'm going to vote in favor of inclusion."

Commissioner Hashimoto stated, "I will be voting in favor of the motion. I believe that it's very important that we include, we have more inclusiveness versus exclusiveness in, when we start the process of reapportioning the state senate and house lines."

"I think it's been said, once you start and your number so and so further down the line and you are all in favor of the same thing, I think that most of the major points have already been made. But I believe that the major point that Harold brought up is the issue of exclusion, extraction. How do you extract the people who live, for example, I represented the Pearl City-Pearl Ridge area and you know walking door-to-door, this was many years ago, walking door-to-door I came across many, many military homes, military families who were there for three, four years they were registered voters because back then too we purchased those voter registration lists and they were registered voters. Not necessarily the person who was in the military but their dependents were

registered voters in the area. And so if we decide to exclude the military and exclude their dependents I think that we would be excluding a large number of people who are very active members of our community. It would be very easy to extract those living on military bases, or in prisons or at dorms. But I don't think that those people are any less, should be represented, not represented and we include those who live out in the community."

"In 1992, there was a Constitutional amendment that changed the term registered voter to permanent resident and this included now a larger number of people to participate in our elective process and, but then definition of permanent resident I don't believe has ever been fully or clearly defined and I think that's also an issue that led me to support this motion."

"I truly believe in inclusiveness and am very, very happy that, at this point in time, we have a majority to be able to do that."

Commissioner Stone stated, "Like the majority of my colleagues, I will also be voting in favor to include, and, thank you Mr. Dame for your very eloquent testimony that made this issue a thoughtful one for me. I'm still, I don't wanna be repetitive, like I think we are all stating some of the same reasons but I have a couple of concerns. That being the *Citizens* case and I feel that although it was not directly addressed by the Supreme Court, I feel that there maybe, that the Court was giving us some guidance with respect to its decision on permanent residence."

"That said, we've listened, as Commissioner Chipchase has said, to testimony by military members and I also have had personal experience in the private business community in hiring some of the military spouses that have been here, stationed here throughout the years."

"So, for that reason, I will be voting in favor of including the military."

"One other concern I had, and I think everybody has mentioned this, but I think I'm more concerned with this than anything else, and that's the methodology for exclusion of the military as well as the students and the rest of the population that we're considering not including, so that's my reason and thank you for coming out and testifying."

Commissioner Takitani stated, "Thank you very much. I'm voting against this motion. I think the prior Commissions had it right for the last 50 years, I think the

Supreme Court had it right in the *Citizens vs. Big Island* [sic] case; I think the neighbor island Advisory Councils had it right in their recommendations as well."

"The census clearly shows that the growth in the State of Hawaii, of permanent residents, has taken place on the neighbor islands; enough so, that the neighbor islands would be getting another Senate seat."

"By, suddenly, well I shouldn't say suddenly, there's been this discussion about this for decades, but, by now including the military and their dependents, that seat will not be going to a neighbor island. We will not be going from 28 percent of the State Senate to 32 percent of the State Senate and we will be stuck with that for the next 10 years."

"We have the ability to exclude whoever we want to exclude. We have done it in the past, I think we can identify and exclude if we so choose to, and I think finally I would just like to incorporate Mr. Dame's statements regarding damages to the Big Island and incorporate them as my own. Thank you very much."

Chairperson Marks stated, "I have some concerns about the *Citizens* case and I think one of the concerns I have is that it was based on a summary judgment motion and there wasn't a full and a complete record made for the Court. And so I think it's worthwhile here to look at some of the facts that we've heard which might be a little different than the assumptions made by the Court in the *Citizens* case."

"For example, the federal government counts active duty military and their dependents for Congressional reapportionment and redistricting; that those active duty military and their dependents who are counted as living in Hawaii are not counted in any other state for purposes of reapportionment and redistricting. Many active duty military deliberately choose Hawaii as a duty station, some of them because they have extended family already living in Hawaii."

"We heard that the military had to stop offering Hawaii as a choice for reenlistment because it was over-subscribed, meaning that too many active duty military wanted to be assigned to Hawaii as their duty station and thus many were not involuntarily present in Hawaii. In fact, they were here voluntarily."

"Active duty military's representation is diluted by not being counted for reapportionment. We've also heard that counting active duty military could

possibly dilute the representation of people in other locations like the neighbor islands.”

“Military dependents are not counted for census purposes anywhere other than where they currently reside. Military dependents can vote in Hawaii. Military dependents can hold office here, as can active duty military personnel, for example on Oahu Neighborhood Boards.”

“We’ve heard a lot about how active duty military and their dependents pay taxes. They often own property here, also pay real property taxes here; that military dependents hold civilian jobs and pay income taxes here. They also often hold professional and vocational licenses, such as teachers and nurses. That the Department of Education has one or two full-time positions that serve as liaisons to the military, that the military has a person assigned to the State of Hawaii Board of Education.”

“That active duty military and their dependents are actively involved in the community. They attend schools, they travel on our roads, visit our parks, our beaches and other recreational facilities. They also use our libraries, they attend movie theaters, go out to restaurants.”

“And then again, how we’ve heard about not counting the military or their dependents can be arbitrary and inexact. Same can be said for out of state students; and then the counter-arguments regarding dilution of people being counted.”

“And I think those factual, or at least they were items that were testified about, puts things in a very different context than the context that existed in the *Citizens* case. And therefore, I too will be voting in favor of the motion.”

The motion made earlier by Commissioner Nonaka, seconded by Commissioner Thomason, was passed by 8-1 by the Commission, with Commissioner Takitani voting against the motion.

**VII. Discussion and action, if appropriate, regarding Constitutional and statutory criteria and technical specifications for public submission of proposed redistricting plans**

Project Manager Rosenbrock reported that all interested parties will be able to use the ESRI software to develop and submit plans. He stated that the contract



with the vendor is in process and that work could begin once the Commission completed deliberation and action on the population base.

**VIII. Discussion and action, if appropriate, on status of work for Technical Committee**

Chairperson Marks stated that after this meeting, the Technical Committee will begin their work and come up with a meeting schedule.

**IX. Update on matters from Reapportionment staff. Commission discussion and action, if appropriate, regarding those matters.**

Chairperson Marks reported that the candidate selected for the Secretary position has declined the offer of employment and that the Chairperson and Project Manager determined that the position would be reopened for others to apply. Without objection by the Commission, Chairperson Marks directed the staff to post the position on the Reapportionment website.

**X. Schedule future meeting dates**

Chairperson Marks stated that reapportionment and redistricting plans were required to be released by August 7, 2011 for public hearing. Chairperson Marks asked if Commissioners were agreeable to the following dates and, without objection, set the following meeting dates:

July 12, 2011	Room 325
July 19, 2011	Room 329
August 4, 2011	Room 329
August 9, 2011	Room 329

All meetings scheduled for 2:00 pm.

Chairperson Marks requested staff schedule public hearing dates and locations, and comply with time limit and posting public notice. Chairperson Marks stated that the entire Commission does not have to be present for all public hearings.

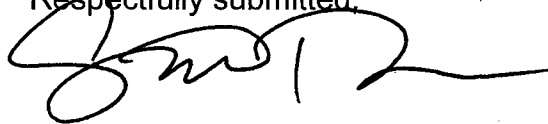
**XI. Adjournment**

Chairperson Marks moved that the meeting be adjourned. Commissioner Nonaka seconded the motion with no objections from the nine commissioners present.

There being no further business, the meeting was adjourned at 5:13 pm.

The next meeting is scheduled for Tuesday, July 12, 2011 at 2:00 pm in Conference Room 325, at the State Capitol.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott T. Nago", with a long horizontal flourish extending to the right.

Scott T. Nago  
Chief Election Officer  
Secretary to the Reapportionment Commission

Testimony for the  
Reapportionment Commission Meeting  
Victoria Marks, Chair

July 12, 2011

by  
Representative Robert N. Herkes

My name is Robert Herkes. I am a third generation resident of Hawaii Island and a member of the Hawaii State House of Representatives.

Over the last few months, the 2011 reapportionment commission has been busy pondering questions about the military living in Hawaii. The main issue being: should we or shouldn't we include them when we count the state's population and figure out where to draw the districts?

If the Reapportionment Commission determines that the military should be included in the population count, then they should recommend **amending** the Hawaii State Constitution – but *not* to **violate** it. HRS 25-2(a) requires the commission to follow "the basis, method, and criteria prescribed by . . . article IV of the Hawaii Constitution." This policy call is NOT within the authority conferred to the Reapportionment Commission. These are constitutional questions that should be answered by the legislators and put to a vote by the electorate in a general election. It is for the *people* to decide, just as they did in 1992.

## The Hawaii Constitution Excludes the Military and their Dependents in Reapportionment

In 1982, a federal court determined that the use of "registered voters" as a base for the 1981 reapportionment, as set forth in Article IV of the Hawaii Constitution, was impermissible under the United States Constitution. (Travis v. King, 552 F. Supp. 554 (D. Hawaii 1982).) To correct this in the following reapportionment in 1991, the Reapportionment Commission sought to establish a new process that would pass constitutional muster. They expressly considered using "total population" as a base, but decided that this was too broad because it included large blocks of transient populations – specifically the military. They settled on a "permanent resident" base that excluded the military and their dependents and in their Final Report, the 1991 Reapportionment Commission recommended that Hawaii's constitution be amended to reflect a similarly permissible "population base."

During the 1992 legislative session, H.B. 2327, in all of its draft forms, amended Article IV sections 4 and 6 of the Hawaii Constitution to require that reapportionment lines be drawn based on an accounting of "permanent residents" rather than "registered voters." The chair of the 1991 Reapportionment Commission testified in support and attached the commission's Final Report to its testimony.

The legislators obviously agreed with the approach taken and proposed by the 1991 Reapportionment Commission. The committee report issued by the Senate Judiciary Committee, the final committee passing the measure, explicitly stated: *"Based on the reasons set forth in **Chapter III of The Final Report**, your Committee also supports the use of a **permanent resident** population base[.]"* (Emphasis added.)

Chapter III of the Final Report attached to the testimony explains that the 1991 Reapportionment Commission's district plan had always excluded nonresident military and their dependents, despite careful deliberations. Among the considerations recorded in Chapter III on pages 25-26 of the report are:

- ***"The presence of large numbers of transients, primarily nonresident military, presents special population problems for legislative apportionment in Hawaii."***
- ***"If nonresidents are included, voters in certain districts which have a large transient population would have their votes 'overweighed' beyond fairness and beyond the 'one person, one vote' principle."***
- ***"It is not clear that the use of total population, while normally a favored base by federal courts, is legal in Hawaii where such large numbers of nonvoters are concentrated in certain areas."***
- ***"A large number of transients were counted in the census (estimated at at least 16%) and this large number could distort the size of certain districts where the framers of our constitution desired a resident or citizen population base."***
- ***"Military personnel have the choice of becoming Hawaii residents. H.R.S. 11-13 sets forth the law governing residency in this State for purposes of voting. The mere presence or absence of a serviceman in this State does not establish residency so the military are given the same opportunity to register to vote as any other person living in this State."***
- ***"[H]istorically, the overwhelming majority of the military population in Hawaii has demonstrated that they have no intention of becoming residents of this state. Only about 3% of the military stationed here choose to become Hawaii citizens."***

***“Some of the remaining military personnel are stationed onboard ships which happen to be in port on the census date, or live on base. While the military is an important and welcomed part of the Hawaiian community, most consider Hawaii a temporary home.”***

Richard Clifton, an attorney and member of the 1991 Reapportionment Commission, testified separately to reinforce these points and to “relate what [he] believe[d] to be the sentiment of the Commissioners generally[.]” He stated,

***“[t]he Commission concluded, however, that “total population” is unsuitable for apportionment of legislative districts, principally due to the large number of military personnel and dependents who live in areas concentrated around military bases. Although they are counted in the census, the vast majority of those people choose to maintain a non-resident status in Hawaii, maintaining instead their legal ties to other states. Both the 1983-84 Commission and 1991 Commission adopted “adjusted population” bases that excluded non-resident military personnel and dependents.”***

Clifton also explained that the Final Report:

***“does not recommend which population base should be adopted. Our experience, though, points in favor of the base that we utilized. We described it as a “permanent resident” population base, applying that to mean an adjustment to subtract the number of non-resident military personnel and dependents. That is what is proposed in H.B. No. 2327, and I support that proposal. It would be useful for the Legislative record to reflect the intended meaning of “permanent residents.” [Emphasis***

A review of the legislative intent does not stop there. Under Article XVII section 3 of the Hawaii Constitution, any amendments to the state constitution that are adopted by the State Legislature must be approved by the people in the next general election. On November 3, 1992 the people of Hawaii voted yes to the following question: "Shall the reapportionment commission use the total number of permanent residents instead of the number of registered voters as the reapportionment base?"

To assist voters in answering the question, these instructions were provided at every polling place and with every absentee ballot:

**"During 1991, the Commission held public hearings and it was recommended that the legislature apportionment base be changed from registered voters to permanent residents. Initially, the Commission had intended that the population base would consist of permanent residents, derived from subtracting minors and nonresident military and their dependents from the total population figures provided in the 1990 Census. However, overwhelming testimony persuaded the Commission to include minors in the count.**

**The commission chose to use the number of permanent residents as the legislature apportionment base because the number of permanent residents was the base used in the last legislative reapportionment, the Proceedings of the Constitutional Convention of Hawaii in 1968 supported its use, the number of canoe districts was reduced, and there was no opposing legal**

**precedent. Minors were included in the count of permanent residents because exclusion of children is contrary to Hawaiian tradition and several organizations testified that if minors were excluded, rural areas and certain ethnic groups such as native Hawaiians would be underrepresented."**

These instructions explain that the term "permanent residents" specifically excludes nonresident military and their dependents. That meaning was approved by the voters and is now law.

**The Hawaii Supreme Court in Citizens for Equitable and Responsible Government v. County of Hawaii**

If this issue were ultimately posed to the Hawaii Supreme Court, we have a very good indication of how they would rule. The court already looked at the 1992 amendments to Article IV sections 4 and 6 of the Hawaii Constitution for guidance in answering a very similar question. The County of Hawaii's interpretation of the reapportionment provisions of the Hawaii County Charter, which mirrors the state constitution, was challenged. However, instead of "permanent residents," the Charter used a much broader term - "resident populations." Nevertheless, the court held that "resident populations" necessarily excludes nonresident military and their dependents. In so holding, it reasoned:

"Logically, the drafters of the Charter would not have modified the word "population" by the adjective "resident" or, on the other hand, would have employed the phrase "total population" had they intended to include nonresident college students and nonresident military personnel and their dependents in the population base."



Citizens for Equitable and Responsible Government v. County of Hawaii, 108 Hawaii 318,323, 120 P.3d 217, 222 (2005). Similarly, the 1992 legislature would have used the term "total population" rather than "permanent resident" to be more inclusive. Why? Because the legislative history on page 23 of Chapter III of the 1991 Reapportionment Commission's Final Report clearly indicates that such a term was considered. Instead, the legislature decided to further modify the word "resident" with the adjective "permanent." The commission has a constitutional duty to give the word "permanent" meaning.

### Summary

The nation is at war. More than one. Today, as we draw the district lines, we have to decide how to account for the large number of servicemen and women currently residing in Hawaii - *temporarily*. In military terms, will Hawaii look the same in 2013? 2016? 2020? Probably not. But its district lines will.

It is important to look at legislative intent, it is the basis of all legislation. More important is what the voters were told the amendment of the State Constitution meant when they voted in 1992. I will repeat what they were told:

**"During 1991, the Commission held public hearings and it was recommended that the legislature apportionment base be changed from registered voters to permanent residents. Initially, the Commission had intended that the population base would consist of permanent residents, derived from subtracting minors and nonresident military and their**

**dependents from the total population figures provided in the 1990 Census. However, overwhelming testimony persuaded the Commission to include minors in the count.**

**The commission chose to use the number of permanent residents as the legislature apportionment base because the number of permanent residents was the base used in the last legislative reapportionment, the Proceedings of the Constitutional Convention of Hawaii in 1968 supported its use, the number of canoe districts was reduced, and there was no opposing legal precedent. Minors were included in the count of permanent residents because exclusion of children is contrary to Hawaiian tradition and several organizations testified that if minors were excluded, rural areas and certain ethnic groups such as native Hawaiians would be underrepresented."**

I am not an attorney but I am legislator and "legislative intent" is very important and must be considered in applying any law. I do not believe that the Reapportionment Commission has the right to go against what the voters of this State were told what the intent of the proposed Constitutional amendment meant when they voted on the amendment.

**CONTACT: Chairman: Steve Pavao (808-430-0267)**

**HAWAI'I COUNTY COMMITTEE  
DEMOCRATIC PARTY OF HAWAI'I**

**RESOLUTION TO SECURE FAIR, EQUITABLE REPRESENTATION  
FOR THE RESIDENTS OF HAWAI'I COUNTY**

The Hawai'i County Committee (HCC) of the Democratic Party of Hawai'i (DPH) – at its Sunday, June 10, 2011 meeting – unanimously voted to request that the 2011 Reapportionment Commission support fair, equitable representation for all residents of the County of Hawai'i in the 2011 Reapportionment process.

As documented in the 2010 Census Public Law 94-171 Data for the State of Hawai'i: "Population Growth Within The Neighbor Island Counties Was Faster Than The Population Growth In the City and County Of Honolulu as well as the entire State of Hawai'i." (See data.)

In keeping with the U.S. Constitutional one man/one vote fairness doctrine, this population growth warrants the addition of a 4<sup>th</sup> Senate seat for the County of Hawai'i.

However, the 2011 Reapportionment Commission has voted to include nonresident members of the military when computing population data prior to redrawing political districts. This negates the creation of a new senate seat for Hawai'i Island.

While members of the HCC honor and strongly support nonresident members of the U.S. military for their dedication to our safety, security and freedom, we believe that nonresident members of the military are just that – nonresidents of the State of Hawai'i. These individuals do not consider Hawai'i "home" – they live and vote elsewhere.

Further, in 1992, a Hawai'i Constitutional Amendment changed the population base to be used for reapportionment from "registered voters" to "permanent residents" and this position was validated by the Attorney General assigned to the 2001 Reapportionment Commission. There is at this time no justification for ignoring the Hawai'i State Constitution, and all of the 2011 neighbor island advisory councils concurred by reconfirming that nonresident members of the

military, nonresident students and felons should not be included in the population base.

Therefore, the HCC asks the 2011 Reapportionment Commission to reverse its decision to include nonresident members of the military.

Further, if necessary, we urge the State Democratic Party to pursue all legal options including filing a lawsuit, if necessary, to overturn this Reapportionment Commission decision that denies Hawai'i County residents equal representation under the law.

This is not a political party issue. Rather, we believe this decision deprives Hawai'i Island voters of fair and equitable representation by denying the addition of a 4th Senate seat for our island and retaining it on Oahu.

A copy of this resolution is to be immediately submitted to the 2011 Reapportionment Commission, the Hawai'i County Reapportionment Advisory Council, the Chair of the Democratic Party of Hawai'i, members of the DPH State Central Committee, and all Hawai'i County elected officials.

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**Statistical Data from the 2010 Census Public Law 94-171 Data for the State of Hawai'i:**

"Between 2000 and 2010, Hawai'i population grew by 12.3% and C&C of Honolulu population increased by 8.8%. Population on the neighbor island counties, however, rose at a faster pace than C&C Honolulu. As a result, their shares of the state's population has increased.

"This continued a trend that began in the 1980s. The fastest growing counties between 2000 and 2010 were Hawai'i and Maui counties, with a 24.5% and 20.8% increase respectively. The C&C of Honolulu now has 70.1% of the state's population, slightly down from 72.3% a decade ago. The combined share of the three neighbor island counties grew from 27.7% to 29.9% between 2000 and 2010. Hawai'i County's population share grew to 13.6% (up from 12.3%), Maui County's population share increased to 11.4% (up from 10.6%), and Kauai County's population share increased to 4.9% (up from 4.8%)." (Excerpted from the 2010 census highlights presented by DBEDT to the 2011 Reapportionment Commission.)

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## The Senate

STATE CAPITOL  
HONOLULU, HAWAII 96813

July 11, 2011

TO: State of Hawai'i 2011 Reapportionment Commission  
Victoria Marks, Chair  
Members: Calvert Chipchase IV, Clarice Y. Hashimoto, Harold S.  
Matsumoto, Elizabeth Moore, Dylan Nonaka, Lorrie Lee Stone,  
Anthony Takitani, Terry E. Thomason

RE: Request To Reconsider Decision to Include Nonresident Members of  
the Military in the Hawai'i State Population Base Regarding  
Reapportionment and Redistricting

On U.S. and Hawai'i State constitutional grounds guaranteeing "one man/one vote" equity in representation, I am writing in support of both the Hawai'i County Reapportionment Advisory Council and the Hawai'i County Committee of the Democratic Party of Hawai'i to request this august commission to reconsider its earlier decision to include nonresident military in the population base regarding 2011 Reapportionment and Redistricting.

I am the sister of a fallen soldier who gave his life in Vietnam for the freedoms we enjoy and am therefore, deeply committed to protecting the rights and interests of our men and women in uniform.

However, to suggest that Hawai'i is dishonoring the contribution of our military forces by excluding these nonresidents in our population base is a very effective distraction from the real truth, which is that these Americans are indeed, "nonresidents." They consider their "homes" to be elsewhere in the USA – where

they are emotionally rooted and where they have permanent residences and where they vote.

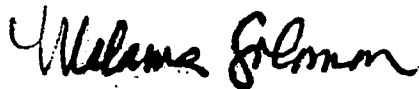
I believe this decision is not about our friends in the Military, but about retaining a Senate seat for O'ahu, which in turn denies the residents of the fastest growing districts of our state on Hawai'i Island the right to a 4<sup>th</sup> Senator.

I am very disturbed by layers of evidence that the commission is "Honolulu centric." Only one member of the commission was appointed who represents a neighbor island. Also, the neighbor island Advisory Councils have been denied support staff, thereby marginalizing their ability to adequately represent the citizens of their County.

Further, the people of Hawai'i weighed in on the issue of fair and equitable representation in the reapportionment process with passage of a Hawai'i Constitutional Amendment in 1992 that changed the population base to be used for reapportionment from "registered voters" to "permanent residents." How can the 2011 Reapportionment Commission simply ignore the Hawai'i State Constitution?

Please note that while I am the current District 1 State Senator, appointed to the position by the Governor, I have nothing to gain or lose. I am speaking up solely because my constituents expect me to protect their rights – and not succumb to the tremendous vortex of power concentrated in Honolulu.

Please reconsider this vote before proceeding with Redistricting. I look forward to your favorable consideration.

A handwritten signature in black ink that reads "Malama Solomon". The signature is written in a cursive, flowing style.

Senator Malama Solomon

District 1 – Waimea, Hāmākua, North Hilo, Rural South Hilo, Hilo, Kaūmana, Keaukaha, Waiākea

Tuesday, July 12, 2011

## Reapportionment Commission: Will its PIG fly?

by Larry Geller

Someone may need to brief Judge Victoria Marks, Chair of Hawaii's 2011 Reapportionment Commission, on the Sunshine Law. Until that happens, it appears that the Commission is acting in ways that shield its activities from the public. And that's not good, given how reapportionment may affect the future course of politics in Hawaii.

If illegal under the Sunshine Law, the decisions already made by the Commission may need to be reversed.

We'll get to the PIG (Permitted Interaction Group) in a moment.

First, it appears from the video that the Commission denied the public the opportunity to weigh in on the critical issue of whether non-residents (e.g., military, students) are counted, which may also affect Neighbor Island representation. That discussion was held only after it was added spontaneously to an already posted agenda.

The Sunshine Law appears to prohibit adding this item to the agenda:

HRS §92-7(d) allows a board to amend its agenda by 2/3rds vote, but not if "it is of reasonably major importance and action...will affect a significant number of persons."

The question of non-resident voting is perhaps **the most controversial matter** to be taken up by the Reapportionment Committee so far, and affects a significant portion of Hawaii's population.



### Caught on video

At its June 28 meeting the Chair admitted that she forgot to add that item to the agenda, and then added it via a motion.



### Transcript of the motion:

Two items. In terms of discussion and action if appropriate regarding the issue of permanent resident population was not specifically on the agenda--through my oversight--and I think it had been on the agenda for the past couple of meetings. It's even been reported by a couple of news organizations that we're going to be deciding that question today, and so at this point I would at least make a motion to amend the agenda so that discussion and action as appropriate regarding permanent resident



population can be taken up.

That's the first part of my motion. The second part is that we also specifically maybe have it on the agenda of our next meeting to then either further discuss or ratify whatever we might have done today.

It seems clear that the public was denied the opportunity to prepare and present testimony on this critical issue by the likely illegal addition of this important item to the active agenda.

### **What was discussed behind closed doors?**

The Commission then went into executive session, and immediately upon returning, moved and decided on the matter. Several of the commissioners came out of the meeting with extensive notes that they read from, suggesting that at least part of the discussion held behind closed doors might have instead been fully open to the public. If so, there could be another potential violation. How to check? OIP has the ability to request and review executive session minutes *in camera*.

### **Is that a PIG in the poke?**

A PIG is a Permitted Interaction Group. It's not clear whether a Technical Committee formed by the Reapportionment Commission at its May 4 meeting was intended to be a PIG or not. PIGs can be formed pursuant to HRS §92-2.5(b)(1) and allow a small group of people to go off on their own schedule, without public notice, to perform a specific, routine task. The PIG must return its report to the Commission on a given date, and action on that report must wait for a subsequent meeting agenda.

It's not clear, but it seems that the Commission may have created a PIG. If it did, then another question

arises—can the task of drawing district lines be hidden from public view by creating a PIG?

If it's not a PIG, then it's not clear how the Technical Committee can operate at all outside of the public view.

Disappeared News wrote to Judge Marks on June 22 seeking clarification of whether the Commission intended to form a PIG. There was no reply, so yesterday I sent another letter (text is [here](#)). This one is bristling with citations to the law. Heck, I'm not an attorney but anyone can play like one on the Internet, right?

In actuality, Hawaii's Sunshine Law is clearly explained in several very accessible Open Meetings Guides and detailed web pages over on the [OIP website](#). There is plenty of help available in simple language for a Commission that is uncertain of how to comply with the law.

When in doubt, OIP is usually very helpful. Probably, I'll have to write to them myself (stay tuned).

**Bottom line: the public deserves full transparency and participation in the critical process of reapportionment. This means no secret meetings other than are allowed by the Sunshine Law, and proper notice for every agenda item so that the public can fully participate.**

Technorati Tags: [Hawaii](#), [reapportionment](#), [Hawaii Reapportionment Commission](#), [Reapportionment Commission](#), [Sunshine Law](#)

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**Permalink** posted by [Larry](#) @ 7/12/2011

06:34:00 AM  

**Text of letter sent to Judge Victoria Marks, Chairperson, State of Hawaii 2011 Reapportionment Commission on July 11, 2010 by Disappeared News**

**Subj: Query re Technical Committee**

Dear Judge Marks:

I support the public's interest in having maximum transparency in the process of developing and adopting the 2011 reapportionment plan and compliance with the Sunshine Law. I would like to inquire into two matters involving the Technical Committee, which the Commission established on May 4, 2011, as follows:

A. Is the Committee intended to be an investigative, Permitted Interaction Group (PIG) pursuant to HRS §92-2.5(b)(1)?

B. What legal authority allows the Committee to draw new district maps as a PIG? These questions are explained below, along with my views on the situations involved.

**A. Is the Technical Committee intended to be an investigative, permitted interaction group (PIG) pursuant to HRS §92-2.5(b)(1)?**

Although the motion relating to how the Committee would operate, adopted at its June 14 meeting, does not explicitly state so, it appears the Commission intended the Committee to function pursuant to HRS §92-2.5(b)(1). Reference to HRS §92-2.5(b) on permitted interactions prior to the motion, and the motion to assign the Committee to investigate the redistricting of state and federal legislative districts, suggest this intent. While I might disagree with the motion, I agree it is necessary because the motion establishing the Committee made it subject to the Sunshine Law. Because of the Sunshine Law's presumption for open meetings, the Commission might consider approving a motion to explicitly make the Technical Committee a PIG pursuant to HRS §92-2.5(b)(1).

At the June 14 meeting there was no reference to the agenda item under which the motion on the Technical Committee was made. The most relevant agenda item appears to be "VIII. Discussion and action, if appropriate, on status of work for Technical Committee" (of June 9 agenda), but it is uncertain that a motion on how the committee operates is

appropriate under item VIII. I believe the public could reasonably expect that this item might include actions related to the work of the Committee, but not necessarily how it operates. I note that HRS §92-7(d) allows a board to amend its agenda by 2/3rds vote, but not if "it is of reasonably major importance and action...will affect a significant number of persons." If the June 14 motion was intended to make the Committee a permitted interactions PIG, I believe the action would significantly affect the public because it would change the status of the public's access to its meetings -- from open to closed. For these reasons, the Commission might consider voting again on the motion at a future meeting.

**B. What legal authority allows the Technical Committee to draw new district maps as a PIG?**

Commission discussions appear to indicate that the Committee's assignment is to draw up maps for federal and state legislative districts for recommendation to the Commission, though the June 14th motion references a Committee of the Whole that has not yet been established. Assuming the Committee is a PIG assigned to investigate the redistricting of state and federal legislative districts, it appears that HRS §92-2.5(b)(1)(C) prohibits deliberation on the matter investigated, except at a full Commission meeting. This section allows PIGs to investigate, provided that: "Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board". I would like to ask if the Commission has another interpretation of HRS §92-2.5(b)(1)(C), or another section of the law, that would allow the Technical Committee to draw new district maps.

I note that HRS §92-2.5(b)(2) could be cited as a legal authority to draw district maps without the presence of the public, but I understand this sub-section was intended for negotiations with external entities. This section allows PIGs to: "Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation." Even without legal authority allowing the PIG to deliberate or negotiate on the matter investigated, I believe the Committee could be authorized to draw new district maps, if the Commission established it as a regular committee--not a PIG, and not exempted from open meeting requirements.

I appreciate the Commission's concerns about the burden that the Technical Committee might encounter if the public were allowed to attend its meetings. My intent is to encourage as much transparency in the reapportionment process as possible, while still supporting the Commission's mandate to approve a new reapportionment plan by the constitutionally established deadlines. I hope this communication will lead to clarification of the Commission's powers and procedures regarding the Technical Committee, and look forward to your response. I also encourage you to consult with the Office of Information Practices on the questions raised above.

Sincerely,  
Larry Geller

**Reference:**

HRS §92-1(2) states "The provisions requiring open meetings shall be liberally construed; and HRS §92-1(3) states "The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings."

HRS §92-2.5(b) states: "Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation."

HRS §92-7(d) No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.